

**MANKE LUMBER COMPANY**  
June 17, 2002  
Comments Regarding  
Natural Resource Damage Settlement Proposal Report  
(Public Review Draft: March 14, 2002)

A. General Comments.

1. Manke Lumber would like to resolve its natural resource liability but finds the Trustees' settlement proposal to be very difficult to understand and respond to.
2. The Trustees have spent several years developing the data to support their settlement proposal. A ninety-day comment period is simply not enough time to adequately assess and comment upon such a detailed and complicated settlement proposal.
3. The Trustees claim to have identified significant evidence of natural resource injury based on their admittedly incomplete natural resource damage assessment for Commencement Bay. The settlement proposal provides some information regarding the damage assessment but primarily focuses on the conversion of damages to discounted service acre years (DSAYs) using the habitat equivalency analysis (HEA).

The Trustees assert that 2,438 DSAYs are required to compensate for natural resource damages. If each DSAY is conservatively estimated to cost \$10,000, the value of the alleged damages exceeds \$24 million. The settlement proposal contains virtually no information with which a PRP can evaluate the underlying basis for the Trustees' \$24 million damage claim. A partial list of issues that warrant further discussion and/or explanation include:

- the Trustees' assumptions regarding baseline natural resource conditions;
  - the Trustees' method for determining chronic and acute effects;
  - the level of uncertainty associated with the damage assessment; and
  - whether bioassay data generated by the Hylebos Cleanup Committee have been factored into the damage assessment.
4. The settlement proposal assumes that sediment remediation in the Hylebos Waterway will be complete in 2003. (Proposal at 13). This assumption may prove to be optimistic. How will the settlement proposal be affected, if the sediment remediation is not completed in 2003?
  5. The settlement proposal acknowledges that the Trustees have not attempted to apportion liability among multiple parties at a single site or facility. (Proposal at 17). For those PRPs associated with a multiple party site, it is impossible to

evaluate the fairness of the settlement without knowing how the Trustees view the intra-parcel allocation.

6. The Trustees' allocation is based on publicly available information. (Proposal at 18). This information is incomplete and often inaccurate. On occasion where the information is accurate, the application of the information is unreasonable or simply wrong. Specific examples are discussed below.
7. The Trustees have used a mass-loading approach to allocate liability for PAHs and PCBs. (Proposal at 18). This has resulted in the smaller potential sources receiving an unreasonably large share of liability relative to the larger sources. Specific examples are set forth below.
8. The settlement proposal assigns each party a share of DSAYs rather than dollars. (Proposal at 19). This approach makes it very difficult for parties with the smallest shares of liability to resolve their obligations easily and with minimal transaction costs. The smaller PRPs want to "cash out" but under the Trustees' proposal, it is impossible to quantify the settlement offer. The smaller parties have neither the inclination nor the expertise to undertake mitigation projects; they simply want to pay cash and walk away. The Trustees' proposal does not offer any such relief.
9. The Trustees have provided the PRPs with a CD containing copies of the supporting documents. However, not all of the documents cited in the settlement report as a basis for assigning liability are included on the CD and therefore were not available for review. Specifically, Document No. 261 is repeatedly cited in Appendix H as the basis for allocating liability to parties but this document is neither described in the list of supporting documents nor is a copy of the actual document included on the CD. See Appendix H "Hylebos Waterway NRDA Allocation References," page 13 of 17.

B. Specific Comments.

1. The municipal roadways and runoff associated with motor vehicle operation were not included as sites for purposes of the study. (Appendix H at 10). As demonstrated at other waterways in Commencement Bay, stormwater runoff from roads and urban/residential property has been found to be a significant source of PAHs, BEP, and other substances of concern. City storm drains discharge directly to the Hylebos Waterway at multiple locations, including a municipal storm drain outfall that discharges from Manke Lumber's shoreline. The Trustees' decision to apparently exclude these obvious pathways has resulted in the City of Tacoma receiving a lesser share of PAHs than Manke Lumber and other businesses. This is an absurd result. The City's storm drains

discharge PAHs and other SOC's to the Hylebos Waterway every time it rains. The City of Tacoma's allocable share of PAHs should be significantly increased and the shares of Manke Lumber and other businesses should be reduced.

2. The Trustees assert that in order to subject a site to allocation, some activity must be conducted which was reasonably likely to have involved a SOC. (Appendix H at 21). The Trustees have assigned the Manke Lumber property allocable shares of antimony and TBT but have provided no evidence of a release.

There is no factual basis for attributing releases of antimony and TBT to Manke Lumber. The pending CERCLA settlement with EPA is not based on any such releases. The PRP Group's private allocation expert, Matt Low, did not find any association between the Manke Lumber property and antimony and TBT. Furthermore, there are obvious sources for antimony and TBT on either side of Manke Lumber: Jones Goodell Shipbuilding and Tacoma Boat.

The Trustees appear to have taken a simplistic approach based on the presence of antimony and TBT in front of Manke Lumber's property. The Trustees' supporting documents demonstrate that both Jones Goodell and Tacoma Boat are associated with antimony and TBT releases. (See Document Nos. 48, 59, 261, and 287).

3. Appendix H, Table 3-5 sets forth the Trustees' allocation of SOC footprints subject to mass loading. There is no basis for assigning Manke Lumber with 75% of the responsibility for antimony footprint SB2. As noted above, Jones-Goodell is the obvious source of antimony, but it has been assigned only a 25% share of SB2. Similarly, Manke Lumber is allocated 5% of antimony footprint SB3. SB3 is located near the General Metals – Tacoma Boat shoreline. It is simply absurd to suggest that activities on Manke Lumber's property have contributed to accumulations of antimony offshore from General Metals.
4. Appendix H, Table 3-5 also assigns Manke Lumber 5% of the responsibility for footprint TBT3. As illustrated in the SOC distribution map for TBT, the TBT3 footprint is obviously associated with the boat building activities at Tacoma Boat and the ocean-going ship traffic at Weyerhaeuser's export facility. There is no reasonable basis for assigning Manke Lumber any portion of the TBT3 footprint. Moreover, the Trustees should reconsider Weyerhaeuser as a source of TBT. Weyerhaeuser's log ships are exactly the kind of ships that use TBT as an antifoulant in their bottom paint. To date, Weyerhaeuser has not been assigned any TBT share.
5. Appendix H, Table 3-5 does not assign Jones-Goodell any share of responsibility for TBT releases. The TBT2 footprint is immediately offshore of its facility and Jones-Goodell should be assigned 100%.

6. Manke Lumber's allocation for PAHs (4.623 DSAYs) is not supported by the Trustees' documents. (Appendix H, Site Activity Report at 16). The documents describe a single incident in 1987 when an oil/water separator malfunctioned and a small amount of oil reached the Hylebos. (Document No. 52). The removal of an underground storage tank and 100 cubic yards of soil occurred on a parcel across the street from the Hylebos; there was no evidence of migration to the waterway. (Document No. 54). This evidence should be contrasted with the documentary evidence regarding spills and improper storage of PAHs at Jones Goodell, Wasser & Winters, and Tacoma Boatbuilding. (See Document Nos. 48, 102, 260, 285, and 332). The share of PAHs assigned to the Manke Lumber site should be reduced by 50%.